IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 70 of 2005.

Date of decision: 26.12.2005.

The Secretary Bandhu, Agriculture Co-operative Society & Ors. .....Appellants

Versus

Om Prakash & Ors. ... Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the appellants : Mr. K.D. Sood with Mr. B.K. Sood, Advocates.

For the respondents: Mr. Bhupender Gupta, Senior Advocate with Janesh Gupta, Advocate.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the defendants – appellants against the judgment and decree dated 3.1.2005 passed by the District Judge, whereby the appeal filed by the plaintiffs was accepted, the judgment and decree of the trial Court were set aside and the suit of the plaintiffs was decreed.

The facts which are relevant for the decision of the present appeal are that the plaintiffs had filed a suit for possession by way of demolition of any structure on the suit land against the defendants, with the allegations that the plaintiffs were owners of the suit land and the defendant Society was recorded as tenant over the same at the annual

[1]Whether reporters of Local Papers may be allowed to see the judgment?

rent of Rs.45/-. It was alleged that Smt. Mansha Devi, predecessor-in-interest of the plaintiffs, was taken to the Tehsil Office by defendant No.3 Julfi and he got an agreement drafted in Urdu language through a petition writer and procured thumb impression of Smt. Mansha Devi fraudulently and by misrepresentation and managed an annual tenancy agreement of the suit property on the annual rent of Rs.45/- only. It was alleged that the defendant – Society had raised construction over the suit property without any authority. It was further alleged that the agreement in question was illegal and void and if it was found that the said agreement was valid, the present plaintiffs had terminated the tenancy by issuing a legal and valid notice under Section 106 of the Transfer of Property Act, which was duly received by the defendants.

The suit was contested by defendants by filing written statement, taking various preliminary objections including the plea regarding its maintainability and lack of valid notice etc. On merits, it was alleged that defendant – Society being the tenant over the suit property had become owner of the land by operation of law. It was further alleged that the original agreement was part of the record of defendant – Society and that the tenancy could not be terminated by a notice under Section 106 of the Transfer of Property Act, since there was a stipulation in the agreement not to eject the defendant – Society till its existence.

After hearing both sides and perusing the record, the learned trial Court dismissed the suit of the plaintiffs, holding that the tenancy in question was of a permanent nature and as such, the tenancy had not been validly terminated by issuing a notice under Section 106 of the Transfer of Property Act and that the agreement in question dated 16.1.1975 was legal and valid. However, the appeal filed by the plaintiffs

was accepted by the learned District Judge, the judgment and decree of the trial Court were set aside and the suit of the plaintiffs was decreed for vacant possession of the suit land after demolition of any structure standing thereon, holding that as per the alleged agreement the lease was on year to year basis and in any case for a term exceeding one year and such a lease could be created only by registered document, whereas the agreement in question was unregistered document and the same could be looked into only for collateral purposes. It was further held that the lease in question had validly been terminated and the plaintiffs were entitled to the possession of the suit property. Resultantly, the suit of the plaintiffs was decreed, after setting aside the judgment and decree of the trial Court. Aggrieved against the same, the defendants filed the present Regular Second Appeal in this Court.

Notice to the plaintiffs – respondents was ordered to be issued and the records were also requisitioned.

I have heard the learned counsel for the parties and have gone through the record carefully.

The learned counsel appearing for the defendants – appellants first of all submitted before me that the suit for possession filed by the plaintiffs was bad in law, inasmuch as the suit had been filed without issuing notice to the Registrar, Cooperative Societies, as required under Section 76 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter to be referred as the Co-operative Act).

However, I find no force in this submission of the learned counsel appearing for the defendants – appellants. Section 76 of the Cooperative Act reads as under:-

> "76. Notice necessary in suits:- No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or the business of the society, until the expiration of two months after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.
>
> Notwithstanding anything contained in section 72 a suit cannot be instituted against a society or any of its officers (concerning the constitution, management or business of the society) unless two months period has expired after notice in writing has been delivered to the Registrar, stating the cause of action. The object is to save the societies from unnecessary involvement in litigation and further to apprise the Registrar of the prospective disputes in which the society would be a party."

From a perusal of the above, it would be clear that notice to the Registrar of Cooperative Societies, is required to be issued before filing a suit against the Cooperative Societies etc., only if the suit is in respect of any act "touching the constitution, management or the business of the society". In the present case, the plaintiffs had filed suit for possession after demolition in respect of the suit property against the defendant – Society. In my opinion, such a suit would not be governed

by the provisions of Section 76 of the Cooperative Act, since the suit in question is neither touching the constitution, management or the business of the society. In this view of the matter, in my opinion, no notice as required under Section 76 of the Co-operative Act was required to be issued in this case to the Registrar of the Cooperative Societies before filing the present suit against the defendant – Society.

It was then submitted before me by the learned counsel appearing for the defendants – appellants that the lease being a permanent lease, the same could not be terminated by issuing notice under Section 106 of the Transfer of Property Act and the learned District Judge had erred in law in decreeing the suit of the plaintiffs. However, I find no force in this submission of the learned counsel appearing for the defendants - Appellants. Admittedly, the lease agreement is not a registered document. If the plea of the learned counsel for the defendants – appellants is accepted, that it was a permanent lease, it would be clear that such a lease agreement was required to be registered. Infact, the lease agreement would be required to be registered if the lease was for a period of one year or more or was on year to year basis. As referred to above, admittedly, the lease agreement is not a registered document. Under these circumstances, the said lease agreement was not admissible in evidence. However, in view of the law laid down by the Hon'ble Supreme Court, in the case **Ram Kumar Dass Vs. Jagdish Chandra Deo, Dhabal Deb and another, (39) AIR 1952 Supreme Court 23**, the lease agreement could be looked into only for collateral purposes like nature of possession etc. Period for which the said lease agreement was executed, could not be looked into by the Courts since the lease agreement was not admissible in evidence, being not a registered

document. In this view of the matter, in my opinion, the learned District Judge had rightly held that the lease in favour of the defendants – appellants stood terminated by issuance of notice under Section 106 of the Transfer of Property Act and the lease in favour of the defendants – appellants stood terminated. On the facts and circumstances of the present case, in my opinion, it could not be said that the lease in favour of the defendants – appellants was a permanent lease, since the lease agreement was not a registered document and the terms of the lease agreement could not be looked into and the said lease agreement could be looked into only for collateral purposes like nature of possession etc.

Keeping in view the facts and circumstances of the case, in my opinion, the learned District Judge had rightly accepted the appeal of the plaintiffs and had rightly decreed the suit of the plaintiffs by way of demolition against the defendants and no fault could be found with the same, especially when the tenancy in favour of the defendants – appellants stood terminated by issuance of a valid notice under Section 106 of the Transfer of Property Act. In my opinion, the learned District Judge had rightly accepted the appeal of the plaintiffs and had rightly granted a decree for possession in favour of the plaintiffs and no fault could be found with the same, especially when the view taken by the learned District Judge is perfectly in accordance with law and no fault could be found with the same.

In view of the detailed discussion above, in my opinion, there is no merit in this appeal and the same is liable to be dismissed, especially when no question of law, much less a substantial question of law, arises for determination in this appeal. Hence, the present appeal is dismissed.

CMP No. 112 of 2004:

In view of the dismissal of the main appeal, the stay order dated 7.3.2005 shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

December 26, 2005
(BSS)